

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 07-24 (CH) (REVISED)

May 2, 2007

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Settlements Involving Section 8(a)(5) Allegations

Recently, in *Deutsche Post Global Mail*, 13-RD-2468, an unpublished decision,¹ the Board revoked the administrative dismissal of a decertification petition and remanded the matter to the Region for further processing. The Regional Director had administratively dismissed the RD Petition filed 2 months after the employer entered into an informal settlement agreement resolving unilateral changes implemented while the union was engaged in initial contract bargaining. The Region, relying on *Poole Foundry*, 95 NLRB 34 (1951), determined that insufficient time had elapsed to allow the parties to engage in meaningful bargaining. The Board revoked the dismissal and remanded the petition to the Region for further processing. In its Order, the Board noted that the informal settlement agreement only required the employer to rescind the unilateral changes and make-whole the affected employees. The Board concluded that “[t]he settlement agreement does not, however, require the Employer to affirmatively bargain with the Union. Absent such a requirement, dismissal pursuant to *Poole Foundry* is not appropriate.”

The Board’s decision illustrates the importance, in settlement agreements involving the resolution of Section 8(a)(5) allegations² that the Region include paragraphs requiring the employer to bargain with the union. Therefore, Regions should include the following paragraphs in such settlement agreements,³

WE WILL NOT, upon request, refuse to bargain in good faith with [union’s name] as the exclusive collective bargaining representative of our employees in the following appropriate unit:

[insert unit description]

WE WILL, upon request, bargain in good faith with [union’s name] as the exclusive collective bargaining representative of our unit employees.

¹ Attached.

² See Casehandling Manual Section 10146.5, “Settlements to be Patterned After Board Orders. “

³ An affirmative bargaining order may not be appropriate in every 8(a)(5) case. See, *Ferguson Enterprises, Inc.*, 349 NLRB No. 57 (March 26, 2007) where the Board narrowed the bargaining remedy in a case with a single unilateral change.

In such cases, where settlement negotiations result in a notice that does not contain these paragraphs, Regions should include a file note documenting the decision to omit this language.

Any questions regarding this memorandum should be addressed to your Assistant General Counsel or Deputy or to the undersigned.

/s/
R. A. S.

Attachment

cc: NLRBU
Release to Public

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